

**Before the
Federal Communications Commission
WASHINGTON, DC 20554**

In the Matter of)	
)	
Application of BellSouth Corporation,)	
Pursuant to Section 271 of the)	
Telecommunications Act of 1934,)	WC Docket No. 02-150
To Provide In-Region, InterLATA Services)	
In Alabama, Kentucky, Mississippi, North)	
Carolina, and South Carolina)	

REPLY COMMENTS OF AT&T CORP.

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FCC ORDERS CITED

SHORT CITE	FULL CITE
<i>Access Charge Reform</i>	<i>Access Charge Reform</i> , Fifth Report And Order And Further Notice Of Proposed Rulemaking, 14 FCC Rcd. 14221 (rel. August 27, 1999)
<i>BellSouth Louisiana II Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana</i> , 13 FCC Rcd. 20599 (1998)
<i>Georgia/Louisiana 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of BellSouth Corporation et al. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , CC Docket No. 02-35 (rel. May 15, 2002)
<i>KS/OK 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of SBC Communications, Inc., et al. for Provision of In-Region InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd. 6237 (2001)
<i>Local Competition Order</i>	First Report and Order, <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 11 FCC Rcd. 15499 (1996), <i>aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC</i> , 120 F.3d 753 (8th Cir. 1997), <i>aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd.</i> , 119 S. Ct. 721 (1999)
<i>Massachusetts 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Massachusetts</i> , 16 FCC Rcd. 8988 (2001)
<i>Michigan 271 Order</i>	Memorandum Opinion and Order, <i>Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan</i> , 12 FCC Rcd. 20543 (1997)
<i>Missouri/Arkansas 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of SBC Communications, Inc., et al. for Provision of In-Region InterLATA Services in Missouri and Arkansas</i> , 16 FCC Rcd. 20719 (2001)

SHORT CITE	FULL CITE
<i>NY 271 Order</i>	Memorandum Opinion and Order, <i>Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York</i> , 15 FCC Rcd. 3953 (1999)

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REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these Reply Comments in opposition to BellSouth's joint application for authorization to provide in-region, interLATA services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.

INTRODUCTION AND SUMMARY

The comments filed with the Commission, as well as other developments in the period after comments were filed, confirm that BellSouth's five-state application is premature, and that the Commission should not grant BellSouth interLATA authorization until it fully implements several key checklist obligations.

Significantly, BellSouth has not done what it promised to do in order to gain approval in the Georgia/Louisiana proceedings. It has not fixed the problems with its OSS; its performance still lags behind parity and established benchmarks; and it has not addressed the problems with its pricing. The Department of Justice ("DOJ") urges the Commission to take a hard look at BellSouth's performance and behavior, and to satisfy itself that BellSouth has actually fixed the many problems identified. Although they recommend approval, the state commissions

essentially confirm in their comments BellSouth's failure to implement a fair, nondiscriminatory change management process, and to fix its well-documented problems of lack of data integrity and continuing performance shortfalls.

The evidence further shows that BellSouth has yet to establish cost-based prices for unbundled network elements, or to permit CLECs to compete on equal terms with BellSouth with respect to the definition of local calling areas. These continuing barriers to entry are significant. The Commission's own recently released data not only disproves BellSouth's claims of a growing CLEC market presence, but establishes that the opposite is true. Whereas total CLEC switched-access lines increased by 14% nationwide during the last half of 2001, CLEC lines in Alabama, Kentucky, North Carolina and South Carolina decreased by almost 9%. This stark divergence from the national trend is compelling evidence that BellSouth's markets are not yet open to local competition.

To grant BellSouth's application in these circumstances would compromise the integrity of the 271 process. The Commission should not allow an RBOC to obtain interLATA authorization with the understanding and expectation that it will soon fix known problems, and then approve a follow-on application that lacks compelling evidence that the prior promises have been fulfilled. The comments thus confirm that BellSouth's application is premature, and should be denied.

I. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS.

The comments confirm that BellSouth denies CLECs nondiscriminatory access to its operations support systems ("OSS") in several ways. BellSouth denies CLECs the opportunity to make meaningful and effective input into its change control process ("CCP"), and has disregarded the Commission's directive to work collaboratively in prioritizing and implementing

change requests. BellSouth's delays in making releases and its practice of making releases with unacceptable numbers of defects have led to a backlog of change requests, making the lack of collaboration and prioritization all the more damaging to development of a competitive market. In addition, BellSouth's OSS continue to fail to meet benchmarks for flow-through, and electronic orders which fall out for manual handling are subject to unnecessary delays and errors in provisioning. Finally, BellSouth's claim that it has the same OSS region-wide remains suspect, given the state-by-state variation in results and BellSouth's practice of phasing in OSS changes on a state-by-state basis.

A. BellSouth Has Neither Implemented, Nor Adhered To, An Adequate Change Control Process.

The comments confirm that BellSouth has failed to complete implementation of the type of change control process that the Commission has acknowledged is vital to establishing and sustaining successful local competition. AT&T Comments at 8-13. As the DOJ has noted, BellSouth's efforts to date do not change the fact that "important steps should be taken to further improve BellSouth's change management process." *DOJ Eval.* at 8.

BellSouth is plainly disregarding the Commission's directive in the *Georgia/Louisiana 271 Order* that BellSouth should "work collaboratively with competitive LECs through the Change Control Process on prioritization issues, provide competitive LECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes, and implement changes in a timely manner." *Georgia/Louisiana 271 Order* ¶ 193.

Instead of collaborating with CLECs, BellSouth unilaterally implemented a patently inadequate prioritization plan of its own, and refuses even to consider any change to the CCP that would alter its unilateral control over the prioritization, implementation, timing, and

sequencing of change requests.¹ AT&T Comments at 9. DOJ notes that “[u]nder the auspices of the [Georgia and Florida PSCs], BellSouth and the CLECs are continuing to engage in a process for establishing new procedures for prioritizing and implementing CLEC change requests.” *DOJ Eval.* at 9.² As the Florida PSC itself has made clear, however, the collaborative process has broken down due to BellSouth’s intransigence, and BellSouth’s unilateral proposed change to the CCP process “has not had ALEC [CLEC] approval.”³ *See Florida PSC End-to-End Process Flow Order* at 5.

AT&T and other CLECs have resisted BellSouth’s proposed “fix” to the serious problems in BellSouth’s procedures for prioritizing and implementing change requests because that proposal is inadequate and unreasonable. BellSouth’s proposal, the so-called “50/50 release capacity plan,” is embodied in its *End-to-End Process Flow, Version 2.1*. *See* Attachment to *Ex Parte* Letter from Sean Lev to Ms. Marlene H. Dortch, Secretary, FCC (July 30, 2002). Under

¹ In further disregard of its obligation to work collaboratively with CLECs, BellSouth has forced CLECs to take this dispute to the Georgia PSC, leading the Florida PSC to promulgate staff recommendations and orders intended to encourage BellSouth to become more collaborative. The inevitable delays associated with such state proceedings make it likely that BellSouth will retain its control over the CCP (and CLECs will remain shut out of that process) for the foreseeable future, even assuming that the PSCs ultimately make a definitive ruling on the issue. AT&T Comments at 9. The Mississippi PSC’s reliance on these proceedings as “provid[ing] a proper forum” for the resolution of the change management dispute, *Mississippi PSC Consult. Rep.* at 15, puts an overly optimistic, Panglossian “spin” on BellSouth’s obstructionism.

² The DOJ has noted that because “BellSouth asserts its OSS is regional in nature,” “it is appropriate to take into consideration the KPMG testing in Florida and actions taken by the Florida and Georgia PSCs.” *DOJ Eval.* at 7 n.17.

³ Showing further disregard for the collaborative approach the Commission mandated, and despite specific indication from the Commission that the dispute over BellSouth’s proposal for last-minute changes in Release 10.6 should be handled through the change management process, *Georgia/Louisiana 271 Order* ¶ 269, BellSouth unilaterally gave CLECs the “choice” of accepting significant changes without sufficient notice and documentation or foregoing necessary defect correction until 2003. WorldCom Comments at 4-5. Some of the pressure was taken off CLECs because Release 10.6 ultimately was delayed as a result of BellSouth’s problems implementing Release 10.5. WorldCom Comments at 5.

that plan, unilaterally developed by BellSouth and currently being advanced by the Florida PSC, CLECs and BellSouth would share equally the remaining release capacity for a given year, but only after all scheduled defects are corrected, all regulatory mandates implemented, and all needed updated industry standards are built. BellSouth would use the remaining 50 percent of capacity to implement “its” releases—and, in its sole discretion, the change requests that it desired to make (whether “Type 4” BellSouth-initiated requests or “Type 5” CLEC-initiated requests). CLECs would prioritize Type 5 and Type 4 change requests for “their” releases, and these would be slotted for implementation in a maximum of two announced CLEC releases during the year. *See Florida PSC End-to-End Process Flow Order* at 5-6. According to the Florida PSC, BellSouth touted this proposal as resolving the outstanding issues over (1) the definition of “CLEC-affecting;” (2) the disclosure of available capacity in a release; and (3) the desire of BellSouth and CLECs to have their respective operational needs identified and included as part of the prioritization process. *See Florida PSC End-to-End Process Flow Order* at 6.⁴

Unfortunately, BellSouth’s proposal is not a true prioritization plan at all. A simple hypothetical illustrates why: Assume an annual release cycle can accommodate eight change requests, and at the time of release scheduling the CLECs and BellSouth have each identified four high-priority change requests and four low-priority change requests. Under BellSouth’s plan, BellSouth could proceed to implement four low-priority change requests as part of the “BellSouth release,” regardless of whether the CLECs actually desired them. By contrast, implementation of the four high-priority requests identified by the CLECs would be far from

⁴ Notwithstanding BellSouth’s creation of separate “BellSouth releases” and “CLEC releases,” the reality is that in this arena the operational needs of BellSouth and the CLECs are fully interdependent. The systems and process subject to the CCP exist only to serve the CLECs and are not used in any of BellSouth’s retail operations. Further, through various cost recovery techniques it is the CLEC’s who ultimately bear the costs associated with either improvement of the process or continued inefficient operation.

certain, since those requests would not only be required to compete with other change requests assigned high priorities, but would be subject to the limited capacity assigned to “CLEC requests,” which is further subject to reduction associated with the implementation of defect corrections and regulatory mandates. AT&T Comments at 10; Bradbury/Norris Decl. ¶¶ 18-19 & Att. 7 (Bradbury/Norris GA/LA Decl.) ¶¶ 160-161. In short, BellSouth’s proposal will simply perpetuate both the CLECs’ current inability to attain prompt implementation of the changes to the OSS that they need the most, and the substantial backlog of change requests desired by CLECs.

The Commission has already noted BellSouth’s failure to comply with its own testing procedures, and its resultant inability to complete software releases without numerous defects. *Georgia/Louisiana 271 Order* ¶ 195. As the Florida PSC has noted, because BellSouth releases contain numerous defects, “software development resources are being dedicated to correcting those defects after a release, which may be diverting resources from addressing and providing ALEC-requested new features.” *Florida PSC Software Defects Order* at 9. Obviously, “[t]his contributes to the backlog of unimplemented change requests.” *Id.* Thus, the comments confirm that BellSouth has failed to complete implementation of the type of change control process necessary to establishing and sustaining successful local competition.

Indeed, the amount of release capacity available for implementation of the change requests most desired by CLECs appears to be *decreasing*, not increasing, even during the application period, when BellSouth ought to be on its best behavior. On June 10, 2002, BellSouth’s Quarterly Tracking Reports showed that 76 percent of the Change Requests BellSouth has implemented since the Change Control Process began in 1998 have been for defects. However, according to the current BellSouth Release Log for the month of May 10 to

June 10, 2002, an astounding 87 percent of the Change Requests implemented were for corrections of defects. *Florida PSC Software Defects Order* at 10. In the words of the Florida PSC, “BellSouth is in a spiral in which it is unable to implement releases both on schedule and with only a reasonable number of defects.” *Id.* at 9.

Even in the course of trying to offer support for BellSouth’s application, the comments of the state commissions essentially confirm the failures of BellSouth’s change management process. Thus, after reciting the various change management failures shown by AT&T and other CLECs, the Kentucky Commission did not attempt to rebut that showing, but simply satisfied itself with BellSouth’s unhelpful concession that the change control process “continues to evolve.” *Kentucky PSC April 26, 2002 Advisory Opinion* at 29. Instead of finding that BellSouth’s CCP satisfied the requirement that BellSouth provide CLECs with a meaningful opportunity to compete, the Kentucky Commission merely announced that it “plans to continue to monitor this process and will require BellSouth to address expeditiously CLEC complaints.” *Id.* Expectations of possible future improvements and promises of future monitoring are not only irrelevant to the issue of the *current* compliance of the CCP with Section 271,⁵ but also offer small comfort to CLECs, given BellSouth’s insistence in Georgia on adversarial proceedings rather than collaboration to correct even the most basic flaws in its change management process.

The Mississippi PSC’s comments to the Commission claim that BellSouth’s change management performance “has improved measurably” since the Mississippi PSC’s Final 271 Order of October 4, 2001. *Mississippi PSC Consult. Rep.* at 15. As evidence, the Mississippi

⁵ See *Michigan 271 Order*, ¶¶ 55, 179 (BOC’s promises to take actions in the future to comply with Section 271 are irrelevant to the issue of its current compliance with Section 271; *Texas 271 Order* ¶ 117 (in determining the compliance of a CCP with Section 271, the Commission reviews the adequacy of the plan “that is in place at the time the section 271 application is filed”).

PSC says that BellSouth now offers a parsed CSR, provides “enhanced opportunities” for CLECs to meet with BellSouth decisionmakers, gives CLECs a role in a “go/no go” recommendation process, and has improved its CAVE environment by, among other things, adding more time for testing prior to issuing a new release. *Mississippi PSC Consult. Rep.* at 15.

However, the Mississippi PSC’s report provides no detail on the particulars of these supposed improvements, which AT&T and other CLECs have shown to be hollow or too recent to determine their effectiveness. BellSouth’s offer of increased contact with BellSouth decisionmakers is meaningless as long as BellSouth remains the sole decisionmaker with veto power over changes vital to the business of its competitors. Similarly, although BellSouth recently agreed to a “go/no go” process after repeatedly refusing to do so, it has limited the utility of that procedure for CLECs by unreasonably restricting participation to CLECs who have tested the release in CAVE, even though many CLECs are unable to conduct testing prior to the implementation date of the release but can discover or be informed of defects in the proposed release even without testing. AT&T Comments at 12 n.7. Even BellSouth’s implementation of the parsed CSR functionality is no evidence of increased cooperation by BellSouth, since BellSouth implemented that functionality only after it was ordered to do so by the Georgia PSC (and after nearly two years of refusing to do so). Even then, BellSouth did not routinely include that functionality in its test environment for three months – and finally included it in the “CAVE” test environment only after prodding from AT&T. AT&T Comments at 11. Further, as WorldCom has noted, the parsed CSR release “included far too many defects.” WorldCom Comments at 3.

The comments confirm that the supposed improvements to CAVE are belied by the clear evidence of what KPMG called “significant defects in the software” in the June 2002 10.5

Release—defects which BellSouth acknowledges were not discovered until after implementation because of differences between its “CAVE” test environment and the actual production environment. AT&T Comments at 11. The Florida PSC has noted that Release 10.2 in September 2001 had ten defects when the release was placed into production, and Release 10.3 in January 2002 had 31 defects. *Florida PSC Software Defects Order* at 8. In its Final Report, KPMG found that Release 10.5 in May 2002 had 28 defects in the software and 24 documentation defects when released into production.⁶ Most egregiously, Release 10.5 had serious defects even after it had been delayed specifically to resolve defects.

Indeed, though some state commissions appear to have accepted at face-value BellSouth’s claim that it has been meeting plan deadlines, *see, e.g., Mississippi PSC Consult. Rep.* at 15, there is clear evidence from BellSouth’s own data of a substantial backlog of pending change requests awaiting implementation, some for more than two years, and the fact that BellSouth has already postponed the implementation of three releases scheduled for implementation in 2002. AT&T Comments at 10. BellSouth still has not managed to schedule the implementation of the 42 candidate change requests now pending. Indeed, BellSouth’s entire 2003 Release Schedule is a meaningless shell. Only the March 2003 Release Implementation Schedule of BellSouth includes any detail, and all of the changes on the schedule are identified

⁶ KPMG Final Report issued July 30, 2002, at 101, 104, 121 (Evaluation Criteria PPR5-2, PPR5-3, PPR5-17). Although KPMG’s Draft Final Report released on June 21, 2002, reflected 18 software defects and 6 documentation defects, KPMG subsequently identified 10 more software and 18 more documentation defects. *Id.*; Transcript of Workshop held July 12, 2002, in Florida PSC Docket Nos. 960786B-TL and 981834-TP, at 96-97 (testimony by David Wirschling of KPMG that KPMG’s Draft Final Report identified 18 software defects and 6 documentation defects in Release 10.5, but that since issuance of the draft report and through July 12, 2002, KPMG had identified 4 additional software defects and 5 additional documentation defects in that release). Indeed, as WorldCom has noted, Release 10.5 contained a “staggering” number of defects, 50 to 100 percent greater than the 10 defects that WorldCom itself would consider to indicate “extremely poor quality” in its own releases. WorldCom Comments at 2-3.

as “Targeted” rather than scheduled, a term which BellSouth defines as changes where “the planning work to include this item in the indicated release is ongoing,” and “[a] final determination as to whether the item will be included in the release has not been made.” *CCP Feature Release Implementation Schedule, 2003*. (Attachment 1 hereto.)⁷ All this confirms the DOJ’s observation that BellSouth may not be “committing sufficient resources overall to the process of upgrading the interfaces to its OSS.” *DOJ Eval.* at 10.

The growing backlog of change requests also demonstrates that BellSouth does not implement change requests in the “timely manner” that the Commission expected. AT&T Comments at 10. BellSouth continues to implement such requests at a rate that is unreasonably slow by any standard, and the bulk of the changes implemented continue to be corrections of defects in its systems, significantly limiting its ability to implement any feature changes desired by CLECs. Under BellSouth’s actual release schedule, that backlog is likely to continue at its present level for the indefinite future, a fact demonstrated by BellSouth’s abandonment of the

⁷ Although BellSouth had maintained for months that the release scheduled for implementation in March 2003 (Release 12.0) would be dedicated almost exclusively to implementation of “infrastructure improvements” (and would not include Type 4 or Type 5 change requests), it advised the CLECs on July 19, 2002, that BellSouth was delaying implementation of the infrastructure improvements due to a need for “additional information” (which BellSouth did not explain) and that the resulting freed-up release capacity in Release 12.0 would be used to implement certain Type 4 or Type 5 change requests. *See Minutes of Release 12.0 Package Meeting held July 19, 2002*, at 2 (Attachment 2 hereto). However, in announcing this modification to Release 12.0, BellSouth made clear that it would henceforth refuse to provide CLECs with information about future releases to which they previously had access. Although the feature release implementation schedule for 2002 has consistently included a detailed listing of all of the releases that BellSouth has implemented (or scheduled for implementation) for that year, BellSouth stated at the July 16th meeting that the 2003 schedule will include only one release at a time – thus preventing CLECs from knowing all of the releases that are scheduled for that year, when the releases are scheduled for implementation, and the changes scheduled for inclusion in each release. *See id.* at 3. Attached hereto are the most recent CCP Feature Release Implementation Schedules that BellSouth has issued for 2002 (Attachment 3) and 2003 (Attachment 1). Although the 2002 schedule lists all releases scheduled for implementation for the rest of the year, the 2003 schedule includes only the March release.

express assurances it made to the Commission in the Georgia/Louisiana 271 proceedings that it could eliminate 80 percent of the current backlog by the end of 2003. AT&T Comments at 10-11.

As noted above, the comments also confirm that new flaws continue to result from BellSouth's OSS "upgrades," demonstrating that BellSouth does not conform to the CCP and perform adequate internal testing of its releases prior to their implementation. *DOJ Eval.* at 11. For example, a BellSouth software upgrade in the fall of 2001 led to USOCs for UNE-P service for payphones being erroneously treated as USOCs for business lines, leaving payphone providers without the "FLEX ANI" feature essential to recover the costs of coinless long-distance calls. Comments of Ernest Communications, Inc. at 4-5. Despite the critical nature of this problem and the burden imposed on payphone providers, BellSouth would commit only to a going-forward fix of the problem in a future software upgrade. *Id.* As another example, BellSouth's March release implementing a "single C" ordering process included a substantial defect which so seriously impaired the accuracy of BellSouth's line-loss reports that WorldCom considered them "essentially worthless." WorldCom Comments at 4.

BellSouth's continuing record of implementing releases riddled with defects is due not only to its failure to conduct adequate internal testing prior to implementation (AT&T Comments at 11-12), but also to the immature nature of its internal software development organization. In May, BellSouth admitted to the CLECs that under Capability Maturity Model ("CMM") criteria its software development processes are certified only as Level 2, which is the second lowest of the five levels of software maturity under these standards. Thus, BellSouth's software development process has not even been certified yet as "documented, standardized, and

integrated into a standard software process for the organization.”⁸ BellSouth’s argument in a recent *ex parte* letter that some of its software suppliers, such as Accenture and Telcordia, have higher software maturity levels than BellSouth itself simply illustrates the immaturity of its own systems.⁹ In any case, BellSouth’s reliance on Accenture and Telcordia is misplaced, since BellSouth controls what software those suppliers will design and provide for its OSS.

BellSouth’s failure to live up to its obligations, and to conform to the mandates of the Commission’s *Georgia/Louisiana 271 Order*, has prompted the Florida PSC to implement additional performance measures to monitor (1) the number of defects in a release, (2) the time it takes BellSouth to correct such defects, and (3) the validation of software by BellSouth following a release. *Florida PSC Software Defect Order* at 11-12. Whether these new measures will accurately capture BellSouth’s CCP failures, and whether these further threats of sanctions will finally force BellSouth to take seriously its obligations, remains to be seen. All that can be said with certainty is that BellSouth has yet to demonstrate that it has established or complied with an adequate CCP.

B. BellSouth Provides Discriminatory Access To Ordering, Provisioning, and Billing Functions

As the comments have noted, BellSouth’s level of system errors and manual fall-out of CLEC orders increases errors and delays in provisioning. AT&T Comments at 14;

⁸ See Stacy Aff., Exh. WNS-OSS-28 at 5. Under the CMM, a classification of Level 1 (“Initial”) means that the software process “is characterized as ad hoc, and occasionally even chaotic. Few processes are defined, and success depends on individual effort and heroics.” A copy of the descriptions and definitions for each of the 5 levels is attached hereto as Attachment 4. Level 2 (“Repeatable”) means that “Basic project management software processes are established to track cost, schedule, and functionality,” and the “necessary process discipline is in place to repeat earlier successes on projects with similar applications.” Attachment 4 at 1. Level 3 (“Defined”) means that the software process “is documented, standardized, and integrated into a standard software process for the organization.” *Id.*

⁹ See *ex parte* letter from Kathleen B. Levitz to Marlene H. Dortch, dated July 23, 2002, at 1.

Bradbury/Norris Decl. ¶¶ 83, 96, 99; *see also* Comments of SouthEast Telephone at 2 (and Attachment “Issue Summary”).¹⁰ Despite the Commission’s expectation that “BellSouth will improve its flow-through performance” (*Georgia/Louisiana 271 Order* ¶ 146), , BellSouth has not reduced the frequency of manual processing or increased its flow-through rates.¹¹

BellSouth continues to place excessive reliance on manual processing, and repeatedly fails to meet the applicable benchmarks set by the PSCs in its region for flow-through of orders – 95 percent for residential resale orders, 90 percent for business resale orders, and 85 percent for UNE orders. As the following tables demonstrate, BellSouth’s “Percent Flow-Through Rates” (the rates on which BellSouth relied in its Application) continue to fall short of the required benchmarks, and its Achieved Flow-Through Rates (which, unlike the Percent Flow-Through Rate, reflects not only manual fall-out caused by BellSouth system error but also the designed manual fall-out caused by BellSouth) remain unreasonably low.

¹⁰ “BellSouth repeatedly missed commitment times, disconnected services on wrong dates, clarified orders in error, completed orders incorrectly, programmed features in the switch incorrectly, provided unacceptable due dates, failed to dispatch technicians when required, etc.” Comments of SouthEast Telephone at 2.

¹¹ According to BellSouth’s flow-through reports, in May 2002 the estimated LCSC LSR load was 168,467, and 104,696 (62.2 percent) of those LSRs had been electronically submitted but had fallen out due to BellSouth’s system design (45,943 LSRs) or BellSouth’s system errors (58,753 LSRs). Of the total, only an estimated 39,459 LSRs (23.4 percent) were manually submitted by CLECs, and only 24,312 LSRs (14.4 percent) fell out for manual processing due to CLEC input error. Although the flow-through report for June 2002 states that the number of manually processed LSRs decreased to 147,628 in June, that decrease simply reflected the overall decrease (of 28,000 LSRs) in the total number of electronic LSRs submitted during that month. The decrease in volumes of manually processed orders in June certainly was not the result of an improvement in BellSouth’s performance; as described below, the percentage of LSRs that fell out for manual processing in June due to BellSouth system error increased from May to June, while the percentage that fell out due to CLEC input error decreased.

TABLE 1
% Flow Through Service Requests

LSR type (benchmark)	April	May	June
Residential resale (95%)	87.39	86.74	88.58
Business resale (90%)	71.89	69.54	73.74
UNE (85%)	84.70	82.57	83.84
LNP (85%)	92.60	89.80	83.60

TABLE 2
% Flow Through Service Requests - Achieved

LSR type	April	May	June
Residential resale	80.53	79.88	81.68
Business resale	51.15	51.58	53.42
UNE	74.87	74.12	77.27
LNP	58.80	53.20	47.80

As unacceptably low as these percentages are, they tell only part of the story of BellSouth's inadequate flow-through performance. Despite its commitment to improve its flow-through performance, BellSouth's current performance has *deteriorated* since the beginning of this year. As shown in the flow-through charts attached hereto as Attachment 5, BellSouth's Percent Flow-Through rates in June 2002 were lower than in January 2002 both in the aggregate and for the separate categories of business resale orders, UNE orders, residential resale orders, and order for local number portability.¹² The Percent Flow-Through rate for the remaining

¹² The reliability of BellSouth's reported performance data has once again been called into question by its recent admission that its methodology for calculating flow-through rates for LNP orders prior to June 2002 had inaccurately classified some LNP orders that were manually processed as flow-through orders for purposes of its reported data. See Bradbury GA/LA Reply Decl. ¶¶ 35-52 (describing unreliability of BellSouth's flow-through data reported for June through August 2001); letter from Bennett L. Ross (BellSouth) to Reece McAlister (Georgia

separate category, residential resale orders, remained the same (88.6 percent) as in January. *See* Attachment 5 hereto.

The decline in BellSouth's performance is due to BellSouth, not to errors made on LSRs by CLECs, as shown by the data in BellSouth's own flow-through reports. The percentage of orders that fell out for manual processing due to BellSouth systems errors was higher in June 2002 than in January 2002. *See* Attachment 7 hereto.¹³ By contrast, according to the reports, the percentage of manual fall-out caused by CLEC errors *decreased* during the same period. *See* Attachment 8 hereto.

Thus, the percentage of manual fall-out due to BellSouth system design and BellSouth system error has not shown material improvement in 2002. As shown in Attachment 8, the rate in June 2002 was 18.59 percent – little change from the January rate of 19.57 percent. Stated otherwise, as in January 2002, nearly 20 percent of LSRs fall out for manual processing due to factors exclusively within BellSouth's control.

The flow-through improvement plan that BellSouth filed last week with the Florida PSC, which had ordered BellSouth to file the plan due to its concerns about the poor flow-through performance by BellSouth, makes clear that BellSouth's flow-through performance will not

PSC), dated July 18, 2002, at 2-3 (attached hereto as Attachment 6). Thus, the LNP flow-through rates for months prior to June (both Percent Flow-Through and Achieved Flow-Through)—which was the first month in which BellSouth reported the rates after it purportedly fixed the problem – represented a decline of as many as 10 percentage points from rates reported in previous months of 2002. Attachment 5 (table, “Flow-Through – LNP”).

¹³ In June 2002, 13.42 percent of electronically submitted LSRs other than LSRs for local number portability (“non-LNP LSRS”) fell out for manual processing due to BellSouth system error, as compared to 12.09 percent in January 2002. Similarly, the percentage of LNP LSRs that fell out due to BellSouth system error increased from 6.72 percent in January 2002 to 14.84 percent in June 2002. *See* Attachment 7 hereto.

improve to any material extent in the near future¹⁴ In its plan, BellSouth states that: (1) it “fully expects to meet” the 85 percent benchmark for Percent Flow-Through for UNE orders in September (even though it has met that benchmark only once, in January 2002); (2) it does not expect to meet the 95 percent benchmark for Percent Flow-Through rates for residential resale orders “until fourth quarter of 2003”; and (3) it will *never* attain the 90 percent benchmark established for Percent Flow-Through rates for business resale orders, and expects to that it will be unable “to reach significant flow through improvement beyond about 82%” (as compared to its June 2002 rate of 73.7 percent). *BellSouth Flow-Through Plan* at 5-6 (Attachment 9). BellSouth’s projections are plainly not the substantial improvement in performance that the *Georgia/Louisiana 271 Order* contemplated – and are clearly insufficient to give CLECs a meaningful opportunity to compete.

BellSouth’s heavy reliance on manual processing inevitably increases delay in processing the orders of CLEC customers. On average, BellSouth takes 18 hours to return firm order confirmation notices or rejection notices for electronically submitted LSRs that fall out for manual processing. AT&T Comments at 16-17. That 18-hour delay is due almost entirely to the long “claim interval” – the period during which the order simply waits in queue for actual handling by the LCSC representative after it falls out for manual processing. Based on the data in BellSouth’s LSR detail report, the “claim intervals” for AT&T’s manually processed LSRs in May 2002 ranged from 15 hours and 49 minutes to 20 hours and 38 minutes.¹⁵

¹⁴ BellSouth’s Proposed Service Quality Measure Flow Through Improvement Plan Issue No. 1, filed July 30, 2002, in FPSC Docket No. 000121A-TP (“BellSouth Flow-Through Plan”) (attached hereto as Attachment 9).

¹⁵ The times vary according to the Operating Carrier Number (“OCNs”) used by AT&T. *See* Stacy Aff., ¶ 15 n.2 (explaining that CLECs often use more than one OCN, especially if they operate in more than one State). Attachments 10 and 11 are tables showing the average claim

The lack of flow-through and the high level of manual fall-out of CLEC orders also increases the risk of errors in provisioning. BellSouth's reported rates of service order accuracy continue to show that BellSouth has missed the applicable benchmarks. *See* AT&T Comments at 16. In June 2002, BellSouth failed to meet the 95 percent benchmark for five of the eleven categories of resale orders and two of the UNE order categories involved. For some order categories, the rates of service order accuracy were as low as 69 or 77 percent.¹⁶

The SOA data submitted by BellSouth in its July 23, 2002, *ex parte* is unreliable, given its inconsistencies with BellSouth's reported data.¹⁷ For example, the universe of completed service orders in the *ex parte* appears to be grossly understated. Although the SOA data in the *ex parte* shows a combined total of only 260,527 completed service orders (both mechanized and non-mechanized), BellSouth's MSS reports list a total of more than 323,000 such orders for the same time frame. Moreover, as shown in Attachment 12 hereto, the number of mechanized orders that BellSouth used to calculate the SOA data in its *ex parte* (58,412) is not only a fraction of the total number of mechanized orders reported on the MSS (395,233), but also only approximately one-quarter of the more than 200,000 non-mechanized orders used in the sample.

intervals experienced by AT&T Broadband Georgia and AT&T Broadband Florida (OCNs 7170 and 7562).

¹⁶ *See, e.g.*, BellSouth Monthly State Summary for South Carolina, June 2002, at 9, 37 (attached to *ex parte* letter from Kathleen B. Levitz, BellSouth, to Marlene H. Dortch, dated July 31, 2002). For example, BellSouth's record of accuracy was only 69.33 percent on orders for designed UNEs (specials) involving less than 10 circuits and requiring no dispatch, and 76.92 percent on business resale orders involving more than ten circuits and requiring a dispatch. *Id.*

¹⁷ *See ex parte* letter from Kathleen B. Levitz (BellSouth) to Marlene H. Dortch, dated July 23, 2002 ("SOA *ex parte*").

That ratio is the reverse of the real world (as described in BellSouth's monthly flow-through report), where mechanized orders outnumber non-mechanized orders by more than two to one.¹⁸

The various deficiencies in the OSS that are described in the comments of AT&T and other parties are confirmed by the third-party testing conducted in Florida by KPMG. KPMG's Draft Final Report, issued in June, found that the OSS was flawed in numerous areas, including change management, pre-ordering, ordering, and provisioning – each of which is critical to a CLEC's ability to compete. AT&T Comments at 18. On July 30, 2002, KPMG issued its Final Report, which reconfirmed the finding of the Draft Report that BellSouth had not satisfied important test evaluation criteria in these areas.¹⁹

C. Questions Remain About The Supposedly Regional Nature Of BellSouth's OSS

The comments further confirm that there are serious questions as to whether BellSouth's OSS are truly the same region-wide. AT&T Comments at 19. The various state commissions principally based their findings of regionality on the PriceWaterhouseCoopers attestation and BellSouth's assertions that its electronic and manual OSS are the same throughout the nine-state region. *See, e.g., South Carolina PSC February 14, 2002 Order* at 20. The South Carolina commission dismissed AT&T's demonstration that performance differed from state-to-state by

¹⁸ *See* "May 2002 SOA Universes and Samples," table attached hereto as Attachment 12. As shown in Attachment 12, there is also a difference of approximately 34,000 LSRs between the universe of non-mechanized orders used in BellSouth's SOA *ex parte* and the volume of non-mechanized orders reported in its flow-through report for the same month.

¹⁹ Of the various evaluation criteria that the its Draft Final Report had found to be "not satisfied," KPMG changed its assessment of only one such criterion to "satisfied": Evaluation Criterion PPR1-6, which evaluated whether BellSouth distributed documentation of proposed changes on a timely basis. *See* Bradbury/Norris Decl. ¶¶ 77-78. However, the Final Report made no change in its determination of "not satisfied" for 14 other evaluation criteria, which included (but were not limited to) other criteria related to the adequacy of BellSouth's CCP (such as the process for prioritizing changes). *Id.* ¶ 113.

suggesting that the Commission's requirement of "sameness" only requires a CLEC to provide equivalent access to all necessary OSS functions and not "identical performance in every case." *South Carolina PSC February 14, 2002 Order* at 21. Of course, that response misses the point: the "same" OSS should not produce results with statistically significant variation state-to-state, so the fact of such variation indicates the OSS is not the same region-wide.²⁰

Moreover, BellSouth's own actions demonstrate that its OSS are not truly regional. For example, as WorldCom has noted, BellSouth's "staggered implementation of the single C process made little sense if BellSouth's OSS were truly regional." WorldCom Comments at 8.²¹ BellSouth instituted a single C ordering process in Georgia, Louisiana, and Mississippi, but continues to use a two order process in Alabama, Kentucky, North Carolina and South Carolina. *Id.* at 7. In addition, BellSouth's claims of regionality do not comport with its claims that cost-based rates for OSS and DUF vary from state to state within the region. *See* Part IV, *infra*.

II. BELLSOUTH HAS NOT YET DEMONSTRATED THAT ITS PERFORMANCE DATA ARE ACCURATE OR RELIABLE, LET ALONE THAT ITS DATA PROVE CHECKLIST COMPLIANCE

In AT&T's opening comments, AT&T showed that BellSouth had failed to demonstrate that its self-reported performance data were accurate or that they demonstrated checklist compliance. AT&T Comments at 21-26; see Bursh/Norris Decl. In particular, AT&T

²⁰ The Tennessee Regulatory Authority ("TRA") recently granted BellSouth's Motion for Reconsideration of the TRA's earlier action rejecting BellSouth's regionality claims, but this occurred only following the appointment of three new Directors, and the grant of the motion for reconsideration does not alter the evidence showing the substantial state-by-state variations in the output of BellSouth's OSS.

²¹ This is not the first time BellSouth has engaged in state-specific rollouts, nor are such rollouts infrequent. For example, in 2000 BellSouth's implementation of automated loop make-up queries failed initially because updates to the state specific Loop and Facility Assignment Control Systems ("LFACS") had not been made and were subsequently implemented on a state-by-state-basis over a period of several months.

demonstrated that BellSouth's reported data were compromised by BellSouth's unilateral redefinitions of performance measures and its refusal to engage in data reconciliation with AT&T and other CLECs. AT&T Comments at 21-24. AT&T also identified numerous errors in BellSouth's reported data, and reviewed KPMG's findings of flaws in BellSouth's reporting that precluded KPMG from verifying the integrity and accuracy of BellSouth's data reports. *Id.* at 24-25. Finally, AT&T showed that even if the Commission presumed, contrary to the evidence, that BellSouth's reported data were accurate, those data demonstrated only that BellSouth fails to provide CLECs with nondiscriminatory access to its OSS. *Id.* at 25-26.

Developments since the filing of these comments, including BellSouth's own ex parte filings, not only reinforce these concerns but demonstrate that BellSouth's performance reports are inaccurate and unreliable. These developments thus confirm that BellSouth has yet to provide this Commission and CLECs with "reasonable assurance that [its] reported data is accurate." *New York 271 Order* ¶ 433. As a result, this Commission lacks a sound evidentiary basis needed to determine whether BellSouth is providing nondiscriminatory service to CLECs. *See Georgia/Louisiana 271 Order* ¶ App. D, ¶ 31.

First, recent events confirm the inaccuracy of BellSouth's prior performance reports, and undermine BellSouth's statements that its new reports should be deemed accurate. This is precisely the sort of "new evidence" that the Commission anticipated would "demonstrate that there are significant problems with the metrics data" and that the Commission foresaw "may have a significant impact on [the Commission's] evaluation of the metric evidence in future 271 applications." *Georgia/Louisiana 271 Order*, ¶ 72.

To begin with, BellSouth's recent ex parte filings leave no doubt that BellSouth's data generated prior to April 2002 were inaccurate. These data, on which the Commission's approval

of the Georgia/Louisiana application was based, were generated using a data collection and reporting platform known as Performance Measurement Analysis Platform (“PMAP”) 2.6. Bursh/Norris Reply Decl. ¶ 23. BellSouth has since switched to a new platform, PMAP 4.0. In an ex parte filing dated July 11, 2002, BellSouth compared its performance results for March 2002 under PMAP 2.6 with the results obtained using PMAP 4.0. These comparative reports show that BellSouth’s reported order volumes, as well as BellSouth’s reported success or failure in meeting any given metric, change dramatically depending on whether the results are generated using PMAP 2.6 or PMAP 4.0. Bursh/Norris Reply Decl. ¶¶ 23-33; *see also id.* ¶¶ 34-36 (discussing BellSouth’s ex parte filing of July 18, 2002, which shows similar discrepancies for Georgia performance reports for March and April 2002 using PMAP 2.6 versus PMAP 4.0). Most notably, in literally dozens of instances across four of the states at issue here, performance results that BellSouth reported under PMAP 2.6 as meeting its performance standards have now been restated by BellSouth under PMAP 4.0 as failing to meet those same standards. *Id.* at ¶¶ 26-32; *see id.* at Att. 4 (listing examples). These radical changes in BellSouth’s reported performance validate the concerns of KPMG, which has been unable to validate the accuracy a number of BellSouth’s metrics in the Florida OSS test using PMAP 2.6 data, *see* AT&T Comments at 25, and preclude any reliance now on this Commission’s prior approval of BellSouth’s PMAP 2.6-based performance.

There is also no basis to conclude that BellSouth’s switch to PMAP 4.0 has solved the problems with PMAP 2.6. It was BellSouth, after all, that assured the Commission that the results generated by PMAP 2.6 were accurate; BellSouth has provided no basis for explaining why, if that remains true, the conflicting results of PMAP 4.0 should be deemed reliable. To the contrary, BellSouth’s “explanations” of the inconsistencies between the two data sets compound

the uncertainty. For example, in its July 18, 2002 ex parte filing, BellSouth concedes that in numerous instances, the reports generated by PMAP 4.0 *exclude* records that would have been included in PMAP 2.6, without providing any indication whether these omitted records are being captured elsewhere in its PMAP 4.0 reports. Bursh/Norris Reply Decl. ¶¶ 38-42. The significance of these omissions is of even greater concern given the fact that, in some instances, the performance results generated by PMAP 4.0 show compliance with performance standards where results generated by PMAP 2.6 did not. Bursh/Norris Reply Decl. ¶¶ 29-32. And BellSouth created yet more cause for concern when, on August 1, 2002, it filed a notification of metrics changes that itself documents numerous ways in which the performance reports generated by PMAP 4.0 are rife with errors. *Id.* ¶¶ 50-52. The record that BellSouth itself has created thus precludes any finding that PMAP 4.0 is generating complete, accurate, and reliable performance reports.

Equally important, KPMG, which is only now in the process of testing PMAP 4.0, is already discovering that PMAP 4.0 is plagued by the same sorts of errors – such as the erroneous exclusion of thousands of orders – that prevented KPMG from verifying that PMAP 2.6 produced accurate and reliable results.²² For example, on July 22, 2002, KPMG opened a new exception (E-176) after it found that BellSouth had improperly excluded more than 5,000 records necessary to calculate BellSouth’s ordering measures, and its testing of PMAP 4.0 remains incomplete. Bursh/Norris Reply Decl. ¶ 43. Thus, no third party testing has validated the accuracy of BellSouth’s performance data, and the testing of PMAP 4.0 to date only provides additional evidence that BellSouth’s reported data are unreliable.

²² See AT&T Comments at 25. In its testing of the PMAP, KPMG found numerous problems with BellSouth’s performance data, and 15 exceptions and 12 observations remain open in this area. For example, KPMG found that BellSouth incorrectly excludes data from important measures relating to FOCs and rejects. See E-114, E-120, E-143, E-145.

BellSouth provided yet further concessions about the inadequacy and errors in its performance reporting at a recent meeting (held July 23, 2002) with AT&T concerning data integrity and data reconciliation. At this meeting (which BellSouth had resisted attending for months), BellSouth confirmed that AT&T had raised numerous valid concerns about the integrity of BellSouth's performance data, and promised to implement various changes to its systems and reporting practices to remedy those concerns. Bursh/Norris Reply Decl. ¶¶ 5, 8-20. These include changes to remedy admitted errors in the classification of the extent to which orders for local number portability are handled manually (*id.* ¶¶ 10-15), as well as changes to address BellSouth's failure accurately to record the time orders are submitted (causing data to be excluded from BellSouth's reports) (*id.* ¶ 16), and to address discrepancies in reported and actual order volumes (*id.* ¶ 19). Given these admitted errors and concomitant need for system fixes, BellSouth should commit to a defined data-reconciliation procedure that would ensure its prompt response to future requests for data reconciliation. *Id.* at ¶¶ 21-22. The establishment of such procedures should be an essential part of any RBOCs' performance reporting obligations, particularly where, as here, errors continue to plague the RBOC's data reports.

More fundamentally, however, BellSouth's concessions in its *ex parte* filings and data reconciliation meeting, together with KPMG's findings to date, confirm that BellSouth has yet to implement a system that generates accurate and reliable performance reports. This Commission should not approve another BellSouth 271 application until BellSouth fully implements this competitively critical obligation.

Second, despite the intervention of the Georgia PSC, BellSouth continues to revise its performance measures unilaterally and without adequate notice to CLECs. This is contrary to this Commission's admonition to BellSouth "that changes to performance measurement

calculations ‘should be made only with public notice and concurrence’” of the state commissions, *Georgia/Louisiana 271 Order*, ¶ 159 n. 575, and the problem remains a serious one. As DOJ states, “[g]iven the clear concerns raised and the support for advance notice and approval procedures expressed by the Department, the Georgia and Louisiana PSCs, and the FCC, the Department is troubled that BellSouth has made many additional changes to its reported performance metrics especially in converting from its computer platform PMAP 2.6 to PMAP 4.0, without notifying CLECs and regulators until after the changes were implemented.” DOJ Eval. at 12-13 (footnote omitted).

While the Department expressed hope that the Georgia PSC’s recent Order requiring BellSouth to provide advance notice of metrics changes will solve the problem, that hope is belied by BellSouth’s continuing defiance of its advance-notice obligations. In its most recent notice regarding metrics changes (dated August 1, 2002), BellSouth conceded that it had failed to provide the requisite advance notice for eight of the 15 proposed metrics changes that it intends to implement with its September 2002 data, and that it had implemented another change without notice or Commission approval. Bursh/Norris Reply Decl. ¶¶ 46-47. Moreover, the disclosures that BellSouth has made continue, in DOJ’s words, to be “poorly documented . . . and do not appear to contain the level of information contemplated by the Georgia PSC.” DOJ Eval. at 14 n.51; see Bursh/Norris Reply Decl. ¶¶ 48-52 (describing deficiencies). BellSouth’s tardy and superficial advance notifications of metrics changes thus continue to defy the efforts of the Georgia PSC and CLECs accurately to evaluate and monitor BellSouth’s performance.

Finally, the comments raise an important issue concerning the enforceability of BellSouth’s performance remedy plan in South Carolina. See Worldcom Comments at 20-23. According to WorldCom, the South Carolina PSC approved the SEEM (renamed “IPP” in South

Carolina) only as an SGAT requirement and an option that CLECs may include in, and seek to enforce through, their ICAs. But Worldcom also notes that although the South Carolina PSC has ruled that the award amounts set by the IPP can be treated as liquidated damages, the South Carolina PSC itself cannot award fines and penalties for violations of arbitrated agreements. *Id.* at 21. The situation in South Carolina thus appears to contrast with that in Arkansas, where this Commission concluded that the state commission did have the authority and the capacity to provide effective enforcement of interconnection agreements. *See Missouri/Arkansas 271 Order* ¶ 131. The South Carolina IPP evidently is not only not self-executing, but not one that can be “executed” at all.

This Commission has recognized the vital role that state regulatory agencies play in monitoring and enforcing a BOC’s compliance with its statutory obligations after Section 271 relief is granted.²³ Indeed, this Commission has emphasized that “state performance monitoring and post-entry enforcement”²⁴ mechanisms are “critical complements to the Commission’s authority to preserve checklist compliance pursuant to section 271(d)(6).”²⁵ Thus, for example, in approving Bell Atlantic’s New York 271 application, the Commission emphasized that the New York PSC was “committed to supervising the implementation of [performance assurance] plans” that were designed to assure that the markets remained open in the wake of Section 271 relief. *New York 271 Order* ¶ 12. In that connection, the Commission applauded the New York

²³ Thus, for example, in approving SWBT’s Kansas and Oklahoma 271 applications, the Commission acknowledged that both the Kansas and Oklahoma Commissions had the authority to review and modify the performance measurement plans and take swift action if SWBT failed to comply with its performance obligations. *Kansas/Oklahoma 271 Order* ¶ 275 n. 839.

²⁴ *Texas 271 Order* ¶ 420.

²⁵ *Texas 271 Order* ¶ 420, n.1219 (emphasis added); *New York 271 Order* ¶ 429, n. 1316; *Kansas/Oklahoma 271 Order* ¶ 269, n. 828; *Massachusetts 271 Order*, ¶ 236, n. 757.

PSC's ongoing efforts to assure the continuing refinement of performance metrics through collaborative proceedings. *Id.* ¶ 438. The Commission also cited the authority of the New York PSC to reallocate penalty payments for performance failures, thereby “‘dramatically increasing [Bell Atlantic’s] incentives to maintain or improve service in particular areas.’” *Id.* ¶ 437 (footnote omitted). Additionally, the Commission heralded the fact that the New York remedy plan was “‘enforceable as a New York Commission order’” that could subject Bell Atlantic to penalties of \$100,000 daily. *Id.* ¶ 441, n. 1353.

A performance remedy plan without the teeth of post-entry enforcement by the state commission will not be effective in producing compliance with performance measures and remedies. Nor could BellSouth’s promises of future compliance have any probative value.²⁶ The apparent inability of the South Carolina PSC to enforce the penalty provisions of a performance remedy plan would compromise swift and effective resolution of performance issues arising after Section 271 entry, and precludes a grant of interLATA authority for BellSouth in South Carolina.

III. BELLSOUTH DOES NOT PROVIDE REASONABLE AND NONDISCRIMINATORY ACCESS TO INTERCONNECTION

The comments also confirm AT&T’s demonstration that BellSouth does not provide reasonable and nondiscriminatory access to interconnection. AT&T Comments at 26 *et seq.*

As AT&T demonstrated in its comments, BellSouth is effectively preventing AT&T from exercising its right to define its local calling areas — a right enjoyed by BellSouth itself — by billing AT&T at switched access rates for calls that should be treated as local calls. BellSouth is thus denying AT&T the ability to interconnect its local network with BellSouth’s on terms that

²⁶ *Michigan 271 Order* ¶ 55 (stating that “[p]aper promises do not, and cannot, satisfy a BOC’s burden of proof”).

are just, reasonable, and nondiscriminatory. AT&T Comments at 26-29. The state commissions brushed off BellSouth's patently discriminatory behavior by treating the dispute as if it could be deferred under the Commission's *Intercarrier Compensation NPRM*. See, e.g., *Alabama PSC 271 Order* at 75.

Whatever the eventual outcome of that proceeding, however, AT&T has the right under its ICA with BellSouth to treat calls that originate and terminate within a single LATA as local calls. Berger Decl. ¶¶ 9-10. BellSouth is denying AT&T's ability to offer extended local calling areas by refusing to accept the higher Percentage Local Usage ("PLU") factor that results from AT&T's offer of extended local calling. As a result, while AT&T is providing local service to customers on a LATA-wide basis, AT&T is being forced to compensate BellSouth at switched access rather than reciprocal compensation rates for that portion of the traffic that originates or terminates outside the BellSouth-defined calling areas, making it uneconomical for AT&T to offer LATA-wide local calling. Berger Decl. ¶¶ 11-13. The Commission cannot find a BOC in compliance with its interconnection obligations when that BOC is using the existence of a Commission proceeding on a matter of statutory interpretation under the Act as a cover for dodging compliance with its ICAs — which are themselves an obligation under the Act.²⁷

²⁷ The comments also confirm a concerted effort by BellSouth to frustrate interconnection by CLECs with unreasonable and uneconomical distortions of the terms and conditions of interconnection. KMC Telecom and NuVox complain about being "charged tariffed access rates for interconnection trunks and facilities," in violation of the requirement of section 252(d)(1) that interconnection services be provided at cost-based, TELRIC rates. KMC Telecom/NuVox Comments at 4. As they note, BellSouth treats interconnection trunks and facilities as special access.

IV. BELLSOUTH DOES NOT SATISFY CHECKLIST ITEM TWO

A. BellSouth's DUF And Switching Rates Are Inflated.

BellSouth's daily usage feed ("DUF") rates in four of the states, and proposed rates in North Carolina, are several times higher than the rates that a TELRIC-compliant cost study would produce. AT&T Comments at 30-34. BellSouth's DUF rates for Alabama, Kentucky, Mississippi and South Carolina are based on the same DUF cost study, a cost study that contains numerous clear TELRIC errors that make these DUF rates several times higher than cost-based rates. *Id.*; Turner Decl. ¶¶ 6-16.²⁸ The DUF rates in North Carolina were higher still.²⁹

²⁸ With the exception of Kentucky, the DUF rates proposed by BellSouth are based on SGAT filings made by BellSouth either after the conclusion of the state rate proceedings or in the weeks prior to its Section 271 application. *See* Letter from Frank Semmes, BellSouth, to Walter Thomas, Secretary, Alabama PSC (June 18, 2002); Letter from Thomas Alexander, BellSouth, to Brian Ray, Executive Secretary, Mississippi PSC (May 29, 2002) (referencing revisions to DUF rates in SGAT on January 9, 2002); Letter from Caroline Watson, BellSouth, to Hon. Gary Walsh, Executive Director, PSC of South Carolina (May 30, 2002). In North Carolina, as discussed above, BellSouth submitted revised DUF rates in an SGAT filing on July 22, 2002. Letter from Edward Rankin, III, BellSouth, to Geneva Thigpen, Chief Clerk, North Carolina Utilities Comm (July 22, 2002). There have been several generations of BellSouth DUF cost studies, and the cost studies that serve as the basis for the DUF rates proposed by BellSouth for Alabama, Mississippi, North Carolina, and South Carolina were not part of the record in the state UNE rate proceedings. Indeed, BellSouth did not even include the DUF cost studies that support its DUF rates for Alabama, Mississippi, and South Carolina in its Section 271 filing with this Commission, but instead produced the supporting cost studies for those states after a request by AT&T and the Wireline Competition Bureau Staff. *See* Letter from Sean Lev to Marlene H. Dortch, Secretary, FCC (July 2, 2002) (submitting DUF cost studies for Alabama, Mississippi, and South Carolina). Thus, as these specific cost studies were not at issue in the UNE rate cases in these states, this proceeding is the first opportunity for AT&T and other CLECs to address the issues raised by these cost studies for those states. In Kentucky, BellSouth submitted a DUF cost study based on a similar cost methodology toward the end of the rate proceeding in response to a staff discovery request, and the Kentucky Commission adopted those rates in its December 2001 order. In the pending Georgia cost proceeding, BellSouth filed DUF rates based on a similar cost study methodology, and Steve Turner has made many of the same criticisms raised here in testimony in that proceeding. *See* Rebuttal Testimony of Steven E. Turner, Docket No. 14361-U (Ga. PSC), April 5, 2002.

²⁹ The comments noted that differences in the DUF rates within this region cannot be reconciled with BellSouth's regionality claims, noting that in a truly regional system, DUF rates should

Given its untenable position in North Carolina, BellSouth submitted a July 24, 2002 Ex Parte letter stating that it was “propos[ing] to reduce various DUF rates to those currently in effect in Louisiana.”³⁰ These new rates are based on the same cost study principles underlying the rates in the other four applicant states. Turner Reply Decl. ¶¶ 3-5. As such, the new rates, although lower than the prior North Carolina DUF rates, are still overstated and are subject to the same TELRIC errors that inflate the DUF rates in the other four states. *Id.*

BellSouth also charges non-cost-based switching rates in every state, and has compounded the problem by recently establishing a new features rate in three states that bears no rational relationship to BellSouth’s underlying costs. AT&T Comments at 34-39.³¹ BellSouth’s development of feature costs is based on a study that inappropriately averages conflicting and inconsistent characteristics of 56 individual features without taking into account actual feature penetration rates or usage. Pitts Decl. ¶¶ 17-22; Pitts Reply Decl. ¶¶ 3-5.³² Moreover, according

exhibit little if any variation from state-to-state within BellSouth’s region. Turner Decl. ¶ 7; WorldCom Comments at 12; Frentrup Decl. ¶ 22-23.

³⁰ Letter from Glenn P. Reynolds to Ms. Marlene H. Dortch, Secretary, FCC (July 24, 2002) (“BellSouth July 24 Ex Parte”).

³¹ In addition, the fact that BellSouth’s supposedly cost-based rates vary from state-to-state is inconsistent with any claim that its systems are truly regional, and given that its cost models are supposedly based on regional demand. WorldCom Comments at 11; Frentrup (WorldCom) Decl. ¶ 27.

³² Criticisms of BellSouth’s flawed feature costs were specifically raised in Alabama and South Carolina UNE rate proceedings. *See* Testimony of Cynthia M. Wilsky and Don J. Wood on behalf of SECCA, Docket No. 27821, *In the Matter of Generic Proceeding to Establish Prices for Interconnection Services and UNES*, at 79-83 (Alabama Public Service Commission) (April 20, 2001) (attached hereto as Attachment 13). *See also* Post-Hearing Brief of the Southeastern Competitive Carriers Association, Docket No. 27821, at 18-20 (Alabama Public Service Commission) (urging rejection of BellSouth vertical features rate) (attached hereto as Attachment 14). *See* Testimony Of Don Wood On Behalf Of New South Communications, Nuvox Communications, Broadslate Networks, ITC”Deltacom Communications, KMC Telecom, Docket No. 2001-65-C, *In The Matter of Generic Proceeding To Establish Prices For BellSouth’s Interconnection Services, Unbundled Network Elements And Other Related Elements*

to BellSouth data submitted in the North Carolina UNE proceeding, for 36 of the 56 features in BellSouth's features cost study, there were *no* subscribers. Basing costs on such phantom (and often expensive) features is a classic case of "Garbage in, garbage out" costing and is in no way consistent with TELRIC principles. Pitts Reply Decl. ¶¶ 3-5.

BellSouth's revised feature cost port additive in Alabama, Mississippi and South Carolina is similarly inappropriate in charging all customers 55% of the former feature cost port additive rate. Pitts Decl. ¶¶ 23-25. In addition to the flawed features costs, BellSouth has provided no justification for the use of the 55% figure to support this revised feature cost port additive, and none of BellSouth's features plans, including its Customer Choice premium bundle of features, comes close to the 55% feature take rate that BellSouth is using. Pitts Reply Decl. ¶ 6. Indeed, BellSouth's evidence from the North Carolina UNE proceeding shows that the highest take rate on any feature is 30% *Id.* Basing features costs on these unsupported assumptions is clear TELRIC error.

B. BellSouth's UNE Rates In North Carolina Are Not TELRIC-Compliant And Result In A Price Squeeze In Violation Of Checklist Item Two.

AT&T has updated its margin analysis to take into account the reduced rates identified in BellSouth's July 24, 2002 ex parte letter proposing to lower the North Carolina DUF rate and updated information on feature revenue. Lieberman Reply Decl. ¶ 2. After these changes, the margin analysis still shows that BellSouth's North Carolina rates are so far in excess of TELRIC principles that competitive entry into the residential market is not feasible. *Id.* ¶¶ 3-12.

And Services, at 67-70. (South Carolina Public Service Commission) (June 4, 2001) (attached hereto as Attachment 15). *See also* Post-Hearing Brief Of The Competitive Coalition And WORLDCOM, Docket No. 2001-65-C, *In The Matter of Generic Proceeding To Establish Prices For BellSouth's Interconnection Services, Unbundled Network Elements And Other Related Elements And Services*, at 15. (South Carolina Public Service Commission) (September 17, 2001) (attached hereto as Attachment 16). Kentucky does not permit BellSouth to impose

The use of updated features revenue is appropriate because it provides the most accurate profile of the average North Carolina customer and is clearly the appropriate benchmark for the margin analysis. By contrast, BellSouth bases its margin analysis on customers with the “Complete Choice” plan, a bundle of features with revenues of approximately \$35 per month that is not representative of the average North Carolina consumer. BellSouth’s Lake Wobegone approach in which every customer is above average is clearly out of place, and the use of the high-end customer is not appropriate in a margin analysis for determining whether CLECs can compete in the residential market.³³ *Id.* ¶¶ 5-7.

The margin analysis also takes into account all appropriate revenue streams, including long-distance, access, and subscriber line revenues. It appropriately excludes business services, however, because the business market is separate from the residential market and offers no meaningful synergies. DOJ’s Evaluation demonstrates this point in its chart of CLEC entry by state showing, for example, that in North Carolina, CLECs have captured approximately 27% of the business market, but only 3.6% of the residential market. Moreover, UNE-P, the one service that is available to both business and residential services, is currently of limited value in the business market, as its availability is restricted as a result of regulatory constraints. Without meaningful opportunities for synergies or economies, it is not appropriate to include business revenues in a residential margin analysis. *Id.* ¶ 10-12.

WorldCom complains that UNE rates create a price squeeze throughout the region, not just North Carolina. WorldCom Comments at 19-20. WorldCom’s margin analysis, using

separate features charges. In North Carolina, BST removed vertical features charges from its SGAT on June 17, 2002.

³³ In the long distance market, margins relating to high-end customers have been eroded by customer churn and promotional costs spent seeking these competitors. In the local exchange

somewhat different usage assumptions and focusing on a single feature, shows that gross margins would be negative in all of North Carolina, in zones 2 and 3 in South Carolina, and zone 3 in all states (and also in zone 4 in Mississippi). *Id.* at 20.

The comments also confirm that, contrary to BellSouth's claim (Ruscilli/Cox Aff. 86), there is no other entry vehicle that is available to AT&T and other CLECs in North Carolina that could allow multiple CLECs to provide residential service throughout the state. In particular, a "UNE-L" strategy, in which a CLEC leases BellSouth's loops but provides its own switching, is wholly uneconomic because BellSouth has not deployed technology that allows customers to change from one local exchange carrier to another efficiently and effectively, in mass market quantities and at low cost. AT&T Comments at 65. BellSouth's manual "hot cut" process is plagued by ordering problems resulting from BellSouth's failure to determine the existence of necessary facilities prior to issuing a firm order confirmation, KMC Telecom/Nuvox Comments at 13-14, and its unacceptable levels of service outages, including chronic outages and repeat troubles, when facilities do exist. *Id.* at 15-16.

V. BELLSOUTH HAS FAILED TO DEMONSTRATE THAT IT AND ITS SECTION 272 AFFILIATE WILL OPERATE IN ACCORDANCE WITH SECTION 272 IF GRANTED INTERLATA AUTHORITY.

Section 272(c)(1) "requires that a BOC in its dealings with its section 272 affiliate 'may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'" *Second Louisiana 271 Order* ¶ 341 (quoting § 272(c)(1)). As AT&T showed in its comments, BellSouth is in violation of section 272(c)(1)'s unqualified prohibition against discrimination by a BOC in favor of its affiliate through a switched access tariff designed to

market, customer acquisition costs and high NRC charges would similarly erode margins associated with these customers.

establish impermissible growth discounts which would discriminate in favor of BSLD. AT&T Comments at 43-52. BellSouth is claiming that BSLD does not qualify to take service under the FCC growth tariff. This is, however, inconsistent with BellSouth's position in its state tariff filings, and it is inappropriate for BellSouth to attempt to use FCC Contract Tariff 2002-01 as the basis for a later contract tariff with BSLD under the FCC's pricing flexibility rules.

Since the submission of the initial comments, AT&T and BellSouth have filed their pleadings in the North Carolina tariff proceeding, and AT&T has intervened and opposed BellSouth's tariff filings in Georgia, Florida, and Tennessee. King Reply Decl. ¶ 2.³⁴

It is indisputable that BellSouth's Contract Tariff 2002-01 contains growth discounts and as such violates the FCC's clear prohibition of growth tariffs. *See* AT&T Comments at 43-52. In the *Access Charge Reform* proceeding, the Commission prohibited growth tariffs because ILECs could provide no evidence that growth discounts "enhance the development of competitive markets."³⁵ BellSouth has similarly failed to provide any meaningful justification for its growth tariff in this case. In its North Carolina submissions, BellSouth claimed that the tariff was needed to help it retain traffic on its network,³⁶ but such a claim is patently frivolous. The tariff gives discounts to the carrier with 10,000 minutes per month whose traffic is growing 1,000 minutes per month, but denies discounts to the carrier with one million minutes per month on BellSouth's network that is losing 1,000 minutes per month. Discounts should be tied to absolute volumes of minutes provided to the network, not artificial growth rates. This reliance

³⁴ In several of BellSouth states, the growth tariff has become effective, and AT&T is in the process of challenging those tariffs in state proceedings. King Reply Decl. ¶ 2.

³⁵ *See Access Charge Reform*, Fifth Report and Order, FCC 99-206, CC Docket No. 96-262, (released Aug. 27, 1999) (citations omitted, emphasis added) ¶¶ 134-35.

³⁶ BellSouth's Comments, Docket No. P-55, Sub 1366 (NC Util. Comm.), at 4-5 (July 16, 2002) (attached as Appendix 1 to King Reply Decl.).

on growth rates rather than absolute volumes demonstrates that this growth tariff is simply a thinly veiled effort by BellSouth to favor its BSLD long-distance affiliate.

It is also clear that BellSouth intends for BSLD to take advantage of the provisions of this growth tariff. Nowhere in the BellSouth North Carolina pleading or in any discussions with BellSouth representatives has BellSouth stated that BSLD cannot take advantage of the terms of the North Carolina contract tariff. King Reply Decl. ¶ 5.

BellSouth is apparently claiming that BSLD cannot take service under the FCC Contract Tariff 2002-01. But BellSouth's deliberately ambiguous contract language fails to preclude BSLD from doing so in all instances. BellSouth claims, for example, that BSLD cannot take service under the tariff because it has not been a BellSouth "SWA customer" for the past eighteen months. But the contract language fails to exclude the possibility (and BellSouth's ability to claim) that BSLD has been a "SWA customer" for purposes of its Official Services traffic, or other similar traffic. The contract tariff terms thus provide no guarantee that BellSouth will not seek to allow BSLD to take service under SWA Contract Tariff 2002-01. Any such offering would clearly violate Section 272. BellSouth's "trust me" assertions on this subject are no substitute for unambiguous contract tariff language and are entitled to no weight. The Commission has been unambiguous in prohibiting growth tariffs. It should not permit BellSouth to use ambiguities in contract tariff language to avoid this prohibition.

Even if BSLD cannot participate in FCC Contract Tariff 2002-01, it could still seek to take advantage of the contract tariff after 18 months as a BellSouth SWA customer.³⁷ Under the

³⁷ The 18-month period is not a serious impediment to BellSouth, as the period has been running at a minimum since May 2002 (and probably before) when BellSouth received Section 271 approval for Georgia and Louisiana. BellSouth has yet to file for Section 271 approval in Florida or Tennessee, two of its larger states, and it may be seeking to expand the areas in which it has pricing flexibility under the Commission's regulations, which would make more areas available in the future to which its growth tariff could apply.

FCC's pricing flexibility rules, BellSouth can enter into a contract with its long distance affiliate only if it can certify that it has provided service pursuant to that contract to an unaffiliated customer. 47 CFR § 69.727(a)(2)(iii). At a minimum, Contract Tariff 2002-01 is designed to allow BellSouth to provide the certification and to offer the same contract to BSLD whenever BSLD can satisfy the 18 month requirement. It is inconsistent with the antidiscrimination provisions of Section 272 and the Commission's pricing flexibility provisions, however, to allow BellSouth to use Contract Tariff 2002-01 as the basis for certifying that a non-affiliated carrier is taking service under this growth tariff. As Contract Tariff 2002-01 violates the prohibition on growth tariffs, it cannot serve as the basis for such a certification that would allow BellSouth to discriminate in favor of BSLD with a growth tariff. Thus, BellSouth cannot show that it complies with Section 272 unless it is willing to confirm that it will not use its Contract Tariff 2002-01 arrangements with Sprint to certify that it has satisfied the pricing flexibility provisions of 49 C.F.R. § 69.727(a)(2)(iii) to establish a similar contract tariff with BSLD.

VI. BELLSOUTH'S MARKETS ARE NOT YET OPEN TO LOCAL COMPETITION.

The evidence confirms the showing in AT&T's comments that local markets in the five states remain closed to effective competition, and that BellSouth's claims to the contrary are based on dubious data. This is dramatically confirmed by the Commission's own Local Telephone Competition report released on July 23, 2002,³⁸ as reflected in Table 3.

³⁸ *Local Telephone Competition: Status as of December 31, 2001*, Industry Analysis and Technology Division, Wireline Competition Bureau (July 23, 2002).

TABLE 3
CLEC Switched Access Lines

State	CLEC Switched Access Lines 6/30/01 ³⁹	CLEC Switched Access Lines 12/31/01 ⁴⁰	CLEC Share Per FCC Report ⁴¹	CLEC Share Per BellSouth Estimate ⁴²
Alabama	121,059	117,159	5%	11.2%
Mississippi	51,496	43,578	3%	8.0%
North Car.	323,594	302,044	6%	12.9%
South Car.	90,241	72,035	3%	10.7%
Nationwide	17,274,728	19,653,441		

The contrast between the Commission's report and BellSouth's data highlights two critical points. First, while total CLEC switched access lines *increased* by 14% nationwide during the last half of 2001 (from 17.3 million to 19.7 million), CLEC lines in Alabama, Mississippi, North Carolina and South Carolina⁴³ *decreased* by almost 9% during this same period – a period during which BellSouth claims its local markets were open. Second, the Commission's data, based on FCC Form 477 filings, indicate that BellSouth's estimates concerning CLEC entries in these states are wildly overstated.⁴⁴ Given the absence of any

³⁹ *Local Telephone Competition: Status as of June 30, 2001*, Industry Analysis Division, Common Carrier Bureau, Table 6 (February 27, 2002).

⁴⁰ *Local Telephone Competition: Status as of December 31, 2001*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 6 (July 23, 2002).

⁴¹ *Id.*

⁴² BellSouth Br. 3.

⁴³ The Commission's report did not include data for Kentucky in order to maintain confidentiality.

⁴⁴ There are differences between the Commission's data and BellSouth's estimates that may explain a small measure of this marked differential. For example, the FCC data were as of 12/31/01, while the BellSouth estimates were as of March 2002. However, given the trend of falling CLEC market shares reflected in Table 3, this factor may have tended to *understate* the difference between the FCC's data and BellSouth's data. The Commission's data are state-wide data, rather than BellSouth service area data. Also the Commission's data reflect information only from those CLECs submitting Form 477's. It seems highly unlikely, however, that these

meaningful local competition, the Commission has a compelling basis for rejecting this application as inconsistent with the public interest. *See Sprint v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).⁴⁵

latter two factors can explain the enormous discrepancies between BellSouth's estimates and the Commission's data.

⁴⁵ BellSouth suggests that Section 271 approval should be granted here because CLECs have gained a larger share of the residential market in North Carolina than in some other states that have already been granted Section 271 approval. This is a case of "Alice Through the Looking Glass." There is no market share test that has been used by the FCC or DOJ in their Section 271 deliberations. Had there been such a test, the margin (or price squeeze) analysis, which is complementary to the market share test, would have been less necessary. It is absurd, however, to turn the issue around and use the woeful levels of competition in states that have been granted Section 271 approval as the basis for future relief decisions -- especially since such a test was not considered in granting the comparison states' application.

CONCLUSION

For the reasons stated above and in AT&T's opening comments, BellSouth's joint application for authorization to provide in-region, interLATA services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina should be denied.

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August 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2002, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: August 5, 2002
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/s/ Peter M. Andros

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